## PROJEK LEBUHRAYA USAHASAMA BHD v. MAJLIS PERBANDARAN SUBANG JAYA

HIGH COURT MALAYA, KUALA LUMPUR
ASMABI MOHAMAD JCA
[JUDICIAL REVIEW NO: 25-222-10-2013]
24 JUNE 2015

***ADMINISTRATIVE LAW:*** *Judicial review – Certiorari – Application to quash respondent's decisions in imposing authority and encroaching into jurisdiction of applicant – Applicant authorised to develop and maintain highways and toll booths – Whether highways gazetted and demarcated for use as Federal roads – Whether fell under jurisdiction of Federal Government – Whether local government different entity from State Government – Whether respondent had jurisdiction over highways in question – Whether respondent acted ultra vires its powers – Whether toll booth a 'business' defined by Local Government Act 1976 – Whether signboards put up by applicant promotional boards for commercial gains – Whether excluded from "advertisements" as defined by Local Government Act 1976 – Whether decisions of respondent suffered from infirmities of illegality and irrationality – Road Transport Act 1987, s. 85 – Rules of Court 2012, O. 53 r. 3*

The applicant, Projek Lebuhraya Usahasama Berhad, applied for judicial review under O. 53 r. 3 of the Rules of Court 2012 ('ROC 2012') for an order for *certiorari* to quash the respondent's decisions (i) the decision ('first decision') which was conveyed through 'notis amaran' wherein the respondent decided that the applicant had committed an offence of carrying on a business of toll plaza at Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban ('Plaza Tol Sg Besi') without a licence from the respondent; (ii) the decision ('second decision') that was conveyed through a 'notis amaran' wherein the respondent decided that the applicant had committed an offence of displaying an advertisement pursuant to By-law 7 of Majlis Perbandaran Subang Jaya Advertising By Laws 2007 by displaying advertisements at Plaza Tol Sg Besi without a licence from the respondent and (iii) the decision ('the third decision') that was conveyed through a 'notis tawaran' wherein the respondent decided that the applicant had committed an offence under s. 109 of the Local Government Act 1976 by failing to comply with the 'notis amaran'. The salient facts were that the applicant had been given the necessary jurisdiction to develop and maintain Malaysian highways including its toll plazas and the authority to collect tolls to off-set its costs of developing and maintaining these highways. Lebuhraya PLUS and Plaza Tol Sg Besi was declared by the Minister, charged with the responsibility of works, to be Federal roads and were transferred to the jurisdiction of the Federal Government pursuant to the Federal Roads Act 1959. Pursuant to this transfer, the administration and supervision of Lebuhraya PLUS had been vested with the Federal Government and the respondent ceased to have jurisdiction over Lebuhraya PLUS as the said

jurisdiction was now conveyed to the Federal Government. According to the applicant, the respondent was acting *ultra vires* its powers as it did not have the administrative powers over Lebuhraya PLUS which was a prerequisite to issuing the 'notis amaran' and 'notis tawaran'. The respondent argued that it was the responsibility of the applicant to apply for a licence for its business and licence for its advertisements. The issues posed for this court's determination were (i) whether the respondent had jurisdiction over PLUS Highway and Sg Besi Tol Plaza; (ii) whether the toll booth could be considered as a 'business' as defined by the Local Government Act 1976 and Undang-Undang Kecil Pelesenan Tred, Perniagaan & Perindustrial (Majlis Perbandaran Subang Jaya) 2007 Sel PU89 ('SEL PU89') and (iii) whether the signboards put up by the applicant were direction signs and not advertisements as defined by the Local Government Act 1976 and Sel PU89.

**Held (allowing application):**

**(1)** As both Lebuhraya PLUS and Plaza Tol Sg Besi had been gazetted and demarcated for use as Federal roads, these roads and/or location fell under the jurisdiction of the Federal Government. The respondent could not claim that it had jurisdiction over the location where the alleged offences stated in the first and second decisions had been committed. Although the land was still with the State, as the road had already been gazetted and declared as Federal road, the State Government was under a constitutional obligation to ensure compliance so as not to impede or prejudice the exercise of executive authority of the Federation. The respondent could not exert its authority over the said land. The local Government is a different entity from the State Government. Pursuant to s. 85 of the Road Transport Act 1987, any works of any description to be undertaken in, upon, over or under any Federal road must be with the approval of the Minister for works. Hence, the respondent could not impose its authority on the applicant herein. (paras 54-60)

**(2)** The respondent had acted unreasonably by classifying each and every of the applicant's toll booth as a 'business' which requires licence to be applied for from the respondent. It was indeed irrational for the respondent to consider each and every toll booth within the toll plaza as a single 'business' within Sel PU89 to require separate licences to be applied for. The entire toll plaza fell under the purview of the applicant, trading as one single entity. Therefore, it would be absurd to suggest that the applicant had to apply for several licences to operate the toll plaza. The respondent had no jurisdiction to encroach into the jurisdiction of the appellant and to compel the applicant to apply for licence. (paras 65-68)

**(3)** The signboards which the respondent claimed as advertisements were in fact signboards which indicated locations and demarcated lanes. These signboards were purely for the reason of directing road users into the

correct lane. As these signboards were not promotional boards for any commercial gains, these signboards were excluded from the definition of 'advertisement' under Sel PU89. These purported advertisements were of a non-permanent nature placed by a third party on the pillars of the toll gate, therefore the applicant could not be compelled to apply for the permit. Thus, the decisions of the respondent suffered from infirmities of illegality and irrationality which merit curial intervention. (paras 71-75)

**Case(s) referred to:**

*Beta Tegap Sdn Bhd v. Majlis Perbandaran Sepang; Peguam Negara Malaysia (Intervener) [2014] 4 CLJ 551 HC* ***(refd)***

*Carlow Kilkenny Radio Ltd v. Broadcasting Commissioner [2003] 3 IR 528* ***(refd)***

*Council of Civil Service Unions & Ors v. Minister for the Civil Service [1985] 1 AC 374* ***(refd)***

*Harpers Trading (M) Sdn Bhd v. National Union of Commercial Workers [1991] 2 CLJ 881; [1991] 1 CLJ (Rep) 159 SC* ***(refd)***

*Holiday Villages of Malaysia Sdn Bhd v. YB Menteri Sumber Manusia & Anor [2010] 7 CLJ 683 CA* ***(refd)***

*R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC* ***(refd)***

*Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 FC* ***(refd)***

**Legislation referred to:**

Federal Constitution, arts. 74(1), 80, 81, Ninth Schedule

Federal Roads (Private Management) (Collection of Tolls) (Sungai Besi Highway) Order 2004, O. 2(1)

Federal Roads (Sungai Besi Highway) Order 1999, O. 2(1)

Federal Roads Act 1959, s. 3

Local Government Act 1976, ss. 109, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146

Road Transport Act 1987, ss. 67, 85

Rules of Court 2012, O. 53, r. 3(2)

*For the applicant - Fiona Bodipalar & Natasha Louis; M/s Bodipalar Ponnudurai De Silva*
*For the respondent - Nor Razmi Che Mat; M/s Edlin Ghazaly & Assocs*

*Reported by Suhainah Wahiduddin*

## JUDGMENT

**Asmabi Mohamad JCA:**

### Introduction

**[1]** This is an application by the applicant, Projek Lebuhraya Usahasama Berhad ('the applicant') for judicial review under O. 53 r. 3 of the Rules of Court 2012 ('ROC 2012') for an order for *certiorari* to quash the respondent's decisions as set out below:

(i) the decision ("the first decision") which was conveyed through notis amaran dated 30 July 2013 wherein the respondent decided that the applicant has committed an offence of carrying on a business of toll

plaza at Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban, 43300 Seri Kembangan without a licence from the respondent (see letter dated 30 July 2013, exh. A-1 to encl. 3);

(ii) the decision ("the second decision") that was conveyed through a notis amaran dated 30 July 2013, wherein the respondent decided that the applicant had committed an offence of displaying an advertisement pursuant to By-law 7 of Majlis Perbandaran Subang Jaya Advertising By-laws 2007 by displaying advertisements at Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban, 43300 Seri Kembangan without a licence from the respondent (see letter dated 30 July 2013, exh. A-1 to encl. 3);

(iii) the decision ("the third decision") that was conveyed through a notis tawaran mengkompaun suatu kesalahan dated 22 August 2013, wherein the respondent decided that the applicant had committed an offence under s. 109 of the Local Government Act 1976 by failing to comply with the notis amaran dated 30 July 2013 (see letter dated 22 August 2013, exh. A-2 to encl. 3).

**[2]** Besides the above reliefs, the applicant had also sought reliefs in the form of declarations as follows:

(i) a declaration that the respondent does not have the necessary jurisdiction over Lebuhraya PLUS and Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban, 43300 Seri Kembangan;

(ii) a declaration that a toll booth is not a business following the definition of a "business" (perniagaan) under Akta Kerajaan Tempatan 1976, Undang-Undang Kecil Pelesenan Tred, Perniagaan dan Perindustrian (Majlis Perbandaran Subang Jaya) 2007 Sel PU89 ("Sel PU89"); and

(iii) a declaration that the applicant's signs are direction signs and are not advertisements within the definition of "advertisement" (iklan) under Akta Kerajaan Tempatan 1976, Undang-Undang Kecil Iklan (Majlis Perbandaran Subang Jaya) 2007 Sel PU83 ("Sel PU83").

**Cause Papers**

**[3]** For the purpose of this judicial review application the following documents were filed and referred to by this court:

(i) the applicant's application for leave for judicial review dated 25 October 2013 ("encl. 1");

(ii) affidavit in support affirmed by the applicant by Mohammad Fuad bin Khusairi on 25 October 2013 ("encl. 2");

(iii) statement filed pursuant to O. 53 r. 3(2) of the ROC 2012 ("encl. 3");

(iv) notice of hearing for judicial review dated 19 February 2014 ("encl. 7");

(v) the affidavit in reply of the respondent affirmed by Ismail bin Salim on 4 April 2014 ("encl. 8");

(vi) applicant's first affidavit in reply affirmed by Mohammad Fuad bin Khusairi on 24 April 2014 ("encl. 11");

(vii) the second affidavit in reply of the respondent affirmed by Ismail bin Salim on 16 June 2014 ("encl. 12"); and

(viii) applicant's second affidavit in reply affirmed by Mohammad Fuad bin Khusairi on 16 July 2014 ("encl. 13").

**The Salient Facts**

*For The Applicant*

**[4]** The applicant is in the business of developing and maintaining highways in Malaysia. Amongst the highways under the management and administration of the applicant are:

(a) The North-South Highway;

(b) North-South Expressway Central Link;

(c) New Klang Valley Expressway (NKVE);

(d) Seremban Port Dickson Highway;

(e) Federal Highway Route 2;

(f) Butterworth-Kulim Expressway;

(g) Penang Bridge; and

(h) Malaysian-Singapore Second Link.

**[5]** The applicant has been given the necessary jurisdiction to develop and maintain Malaysian highways including its toll plazas. It has also been given the authority to collect tolls to off-set its costs of developing and maintaining these highways.

**[6]** The applicant is granted the authority to collect toll only from plazas that have been constructed on stretches of highway that have been designated as Federal roads. The applicant is authorised to charge road users a fixed amount depending on the location where the road user originates.

**[7]** By a notice (notis amaran) dated 30 July 2013, the respondent decided that the applicant has committed an offence of carrying on a business of toll plaza at Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban, 43300 Seri Kembangan without licence from the respondent.

**[8]** By the same notice the respondent has decided that the applicant has committed an offence of displaying an advertisement at Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban, 43300 Seri Kembangan without licence from the respondent.

**[9]** Through a notis tawaran dan mengkompaun suatu kesalahan dated 22 August 2013 ("notis tawaran"), the respondent decided that the applicant has committed an offence under s. 109 of the Local Government Act 1976 for not adhering to the notis amaran.

**[10]** Lebuhraya PLUS and Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban, 43300 Seri Kembangan was declared by the Minister, charged with the responsibility of works, to be Federal roads and were transferred to the jurisdiction of the Federal Government pursuant to the Federal Roads Act 1959 ("Act 376").

**[11]** Pursuant to this transfer, the administration and supervision of Lebuhraya PLUS has been vested with the Federal Government and the respondent ceased to have jurisdiction over Lebuhraya PLUS as the said jurisdiction is now conveyed to the Federal Government.

**[12]** By issuing the notis amaran and notis tawaran, the respondent was acting *ultra vires* its powers as it does not have the administrative powers over Lebuhraya PLUS which is a prerequisite to issuing the notis amaran and notis tawaran.

**[13]** The respondent has defined the term "business" under the Local Government Act 1976, Undang-Undang Kecil Pelesenan Tred, Perniagaan dan Perindustrian (Majlis Perbandaran Subang Jaya) 2007 Sel PU89 to include a toll booth pursuant to Sch. 3, Item 53 of Sel PU89.

**[14]** Sel PU89 has exhaustively defined what a "business" is and pursuant to s. 2 of Sel PU89, under Tafsiran, a business is every item listed in Sch. 3. In defining what a business is, Sch. 3 does not contain any reference to a toll booth. As such toll plaza is not termed as a "business" under Sel PU89.

**[15]** By issuing the notis amaran and notis tawaran, the respondent was acting beyond its powers and jurisdiction and had acted *ultra vires* its laws.

**[16]** The respondent had adopted a perverse position in viewing each individual toll booth as business. The respondent had also termed iklan to include signages and signboards demarcating toll booths pursuant to Sel PU89.

**[17]** The signboards which the respondent claimed as advertisements are, in fact, signboards which indicate locations and demarcate lanes. These signboards are purely for reason of directing road users into the correct lane. As these signboards are not promotional boards for any commercial gains, these signboards are excluded from the definition of "advertisement" under Sel PU89.

**[18]** The toll booth lanes utilise cash payments systems, a Touch and Go payment system and a SMARTag payment system to collect toll from road users.

*For The Respondent*

**[19]** The applicant had committed an offence pursuant to Undang-Undang Kecil Pelesenan Tred, Perniagaan & Perindustrian (Majlis Perbandaran Subang Jaya) 2007 Sel PU89 by carrying out business of toll plazas at Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban, 43300 Seri Kembangan without a licence from the respondent.

**[20]** The applicant had committed an offence pursuant to By-law 7 of Majlis Perbandaran Subang Jaya Advertising By-laws 2007 by displaying advertisements at Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban, 43300 Seri Kembangan without a licence from the respondent.

**[21]** The applicant had committed an offence under s. 109 of the Local Government Act 1976 by failing to comply with the notis amaran dated 30 July 2013.

**[22]** The Plaza Tol Sg Besi at KM 16 Lebuhraya Kuala Lumpur-Seremban, 43300 Seri Kembangan is located within the jurisdiction of the respondent and not the Federal Government.

**[23]** Toll plaza is defined as a business under the Local Government Act 1976, Undang-Undang Kecil Pelesenan Tred, Perniagaan dan Perindustrian (Majlis Perbandaran Subang Jaya) 2007 Sel PU89 2007.

**[24]** The applicant is operating a business at the said location, therefore it is the responsibility of the applicant to apply for a licence for its business. The applicant also has the responsibility to apply for licence for its advertisements.

**[25]** Under the Third Schedule, Item 53, Undang-Undang Kecil Pelesenan Tred, Perniagaan dan Perindustrian (Majlis Perbandaran Subang Jaya) 2007 Sel PU89 had defined any business which had not been specifically itemised in the Third Schedule to be subject to imposition of a licence pursuant to the said By-laws at the rate not exceeding RM1,000.

**[26]** It is unreasonable for the applicant to deny the existence of a business at said location when the very purpose for the incorporation of the applicant is to operate a business relating to the collection of toll at highways under its administration and control.

**[27]** In view of the above the respondent is not entitled to the reliefs sought *via* encl. 7.

**The Issues**

**[28]** The issues posed for this court's determination are as follows:

(i) whether the respondent has jurisdiction over PLUS Highway and Sg Besi Toll Plaza at KM 16 Kuala Lumpur-Seremban Highway?

(ii) whether the toll booth can be considered as a "business" as defined by the Local Government Act 1976, Undang-Undang Kecil Pelesenan Tred, Perniagaan & Perindustrian (Majlis Perbandaran Subang Jaya) 2007 Sel PU89?

(iii) whether the signboards put up by the applicant are direction signs and not advertisements as defined by the Local Government Act 1976 and Sel PU89?

**Grounds Of Challenge**

**[29]** The applicant had mounted its attack on the decisions of the respondent based on the following grounds:

(i) the respondent does not have the necessary jurisdiction to issue notis amaran and notis tawaran. Therefore the respondent was acting *ultra vires* by issuing these notices;

(ii) the respondent had defined the term "advertisement" to include signboards that demarcate the toll booth, in accordance with Sel PU89, despite the fact that the signboards which the respondent claimed as advertisement are actually signboards that indicate location and demarcate toll lanes; and

(iii) the relevant location is within the purview of the Federal Government which has the authority.

**The Law**

**[30]** In hearing this judicial review application, I reminded myself that this is not an appeal against the decision, action and omission of the respondent but a judicial review of its decision, action and omission. The governing principle in judicial review is that the review is restricted to the decision-making process, and not the merits, substance or justification of the decision in question. Therefore, it is not the function of this court at this stage to look at the correctness of the decision, action or omission but rather with the way the decision, action and omission were arrived at.

**[31]** I am also guided by the principles in the Federal Court case of *R Rama Chandran v. Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145 and the case of *Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd* [2010] 8 CLJ 629; [2010] 6 MLJ 1 where the apex courts held that the decision of the inferior tribunal may be reviewed on the grounds of illegality, irrationality and possibly proportionality and the courts are permitted to scrutinise such decisions not only for process but also for substance.

**[32]** There is also plethora of cases on point, which had delved on the functions of the court in exercising its judicial review powers. Suffice for me to quote the very often quoted decision of Lord Roskill in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* [1985] 1 AC at p. 374 as follows:

> ... This appeal is concerned with and only with judicial review. Judicial review, as my noble and learned friend Lord Brightman stated in *Chief Constable of the North Wales Police v Evans* [1982] 1 WLR 1155, 1174, "is not an appeal from a decision, but a review of the manner in which the decision was made.

(see *Carlow Kilkenny Radio Ltd v. Broadcasting Commissioner* [2003] 3 IR 528; *Harpers Trading (M) Sdn Bhd v. National Union of Commercial Workers* [1991] 2 CLJ 881; [1991] 1 CLJ (Rep) 159; [1991] 1 MLJ 417; *Holiday Villages of Malaysia Sdn Bhd v. Menteri Sumber Manusia & Anor* [2010] 7 CLJ 683; [2009] 6 MLJ 402).

**[33]** I have also reminded myself that it is settled law to qualify as a subject for judicial review, the decision, action and/or omission must have the effect of altering the rights or obligations of the applicant and deprive the applicant of some benefit or advantage (see *Council of Civil Service Unions & Ors v. Minister for the Civil Service* (*supra*) 1 AC at p. 374).

**[34]** Mindful of my role as a judge exercising my judicial review powers, I will focus on the manner the decision, action and/or omission was allegedly made or omitted to do by the respondent and examine if the decision, action and/or omission was tainted with what Lord Diplock described in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* (*supra*) 1 AC at p. 374 as "illegality", "irrationality" and "procedural impropriety".

**Discussion Of The Issues And Decisions Of The Court**

*Issue 1 – Whether The Respondent Has Jurisdiction Over PLUS Highway And Sg Besi Toll Plaza At KM 16 Kuala Lumpur-Seremban Highway?*

**[35]** The first issue to be resolved is to examine which of these two disputing authorities has jurisdiction over PLUS Highway and Sg Besi Toll Plaza at KM 16 Kuala Lumpur-Seremban Highway.

**[36]** The applicant contended that the PLUS Highway and Sg Besi Toll Plaza at KM 16 Kuala Lumpur-Seremban Highway had both been declared to be Federal roads by the Minister charged with the responsibility for works, in the exercise of the powers conferred under s. 3 of the Federal Roads Act 1959. Pursuant to this, the respondent does not have jurisdiction over PLUS Highway and Sg Besi Toll Plaza at KM 16 Kuala Lumpur-Seremban Highway as the same has been transferred to the Federal Government.

**[37]** The respondent on the other hand contended that pursuant to Part XV (ss. 127 to 146) of the Local Government Act 1976, the respondent is empowered to impose rates for any holding under its jurisdiction. As PLUS Highway and Sg Besi Toll Plaza at KM 16 Kuala Lumpur-Seremban Highway fall within the definition of "building" and "street" under the Local Government Act 1976, the respondent has jurisdiction over it.

**[38]** The respondent further contended that pursuant to the Uniform Building By-laws 1984 ("UBBL"), its action to issue the first decision is regular and lawful as the respondent has the powers to require the applicant to apply for licence to operate the business at the toll plaza.

**[39]** The respondent contended that pursuant to By-law 2 (which provides for the definition of "advertisement hoarding"), By-law 19 which gives the authority to the respondent to issue temporary permit for limited period for purposes of erection of hoarding and By-law 20 which empowers the respondent to issue temporary permit for purposes of erection of hoardings or framing for display of advertisement or signboards, it has the necessary jurisdiction to issue the second decision.

**[40]** The respondent further contended that the provisions of the Street, Drainage and Building Act 1974 vests in it the authority to issue the first, second and third decisions. Therefore the respondent contended that its actions in issuing the first, second and third decisions are regular and lawful.

**[41]** Article 74 cl. (1) of the Federal Constitution ("FC") empowers Parliament to make laws on matter enumerated in the Federal list in the Ninth Schedule of the FC. One of the items stated in the Ninth Schedule is communication and transport which includes roads, if declared to be Federal by or under Federal law; regulation of traffic by land within one state; carriage of passengers or goods by land and mechanically propelled vehicle. To give effect to this provision the Road Transport Act 1987 ("Act 333") was enacted.

**[42]** Section 85 of Act 333 prohibits any person from carrying out any works of any form in, upon over or under any road except where plans had been approved and in relation to Federal road, by the Minister charged with the responsibility for works.

**[43]** Section 67 of Act 333 provides that Federal road or, *inter alia*, a road declared to be Federal under Federal law.

**[44]** Besides the above the relevant law applicable to the case at hand is Federal Roads Act 1959 (Revised 1989) which is applicable throughout Malaysia. The purpose of the Act is to provide for declaration of Federal roads, bridges, ferries and other means of communications.

**[45]** Section 3 of the Federal Roads Act 1959 provides as follows:

> Power to declare roads, etc, to be federal
>
> 3. The Minister may after consultation with the Government of the State concerned, by order declare any road, bridge, ferry or other mean of communication in any state to be Federal.

**[46]** Pursuant to Federal Roads (Sungai Besi Highway) Order 1999 (PU(A) 198/1999) made on 15 May 1999, the part of the road known as Sungai Besi Highway commencing from the Selangor Turf Club Junction at KM 12.5 (at

co-ordinate S14163m, E541m) and ending at KM 1.9 (at co-ordinate S6794m, E455m) both distances measured Southwards from the General Post Office, Kuala Lumpur *via* Cheng Lock Road, Pudu Road, Hang Tuah Road, Lapangan Terbang Road, Sg Besi Road and Sungai Besi Highway), including Mines North Toll Plaza, Pekan Sg Besi Interchange, Middle Ring Road 2 Junction, Kuchai Interchange, Salak Jaya Toll Plaza, Salak Jaya Interchange & East-West Link Interchange, being a distance of 10.6 KM, was declared to be Federal roads.

**[47]** *Vide* PU(A) 198/1999 made on 15 May 1999, PLUS Highway and Sg Besi Toll Plaza at KM 16 Kuala Lumpur-Seremban Highway had been declared as Federal road.

**[48]** The Federal Roads (Private Management) Act 1984 (Act 306) gives the power to the Minister charged with the responsibility for works to, by an order published in the *gazette*, authorise any person who has agreed to construct, re-construct, upgrade, repair or maintain road, bridge or ferry which had been declared as Federal road, bridge or ferry under Act 376 to collect tolls.

**[49]** Pursuant to O. 2(1) of the Federal Roads (Private Management) (Collection of Tolls) (Sungai Besi Highway) Order 2004 (PU(A) 280/2004) ("PU(A) 280/2004"), the Minister charged with the responsibility for works had authorised Besraya (M) Sendirian Berhad to demand, collect and retain the appropriate toll as specified in column (2) of the First Schedule for use of either direction of any part of the road known as Sungai Besi Highway, commencing from its junction with Jalan Universiti Putra Malaysia/Serdang nearby Universiti Putra Malaysia Toll Plaza at KM 0.0 (at co-ordinates S19116m, E2623m) and ending near the interchange connecting Jalan Sungai Besi with Jalan Istana Negara at KM 16.6 of the Sungai Besi Highway (at co-ordinates S6794m, E455m) including Balakong Interchange, Seri Kembangan Interchange, Mines South Toll Plaza, Mines North Toll Plaza, Pekan Sungai Besi Interchange, Kuchai Interchange, Salak Jaya Toll Plaza, Salak Jaya Interchange and East-West Link Interchange Middle Ring Road 2 Interchange, by the classes of vehicle as specified in column 1 of the First Schedule.

**[50]** The method and mode of payment of toll had been set out in PU(A) 280/2004 under "Payment of toll" which explained in detail how toll booths are being operated and regulated by the Federal Government at Mines South Toll Plaza situated at KM 5.5, the Mines North Toll Plaza situated at KM 6.8 and Salak Jaya Toll Plaza situated at KM 13.9 (all distances measured from KM 0.0 of the Sungai Besi Highway).

**[51]** Pursuant to the first and second decisions, the respondent had contended that the offences stated therein were committed by the applicant pursuant to Sel PU83 and Sel PU89 respectively at KM 16.0 of Lebuhraya Kuala Lumpur-Seremban.

**[52]** As shown above *vide* O. 2(1) of the "PU(A) 280/2004", the applicant has been authorised to collect toll at KM 0.0 (at co-ordinates S19116m, E2623m) and ending near the interchange connecting Jalan Sungai Besi with Jalan Istana Negara at KM 16.6 of the Sungai Besi Highway (at co-ordinates S6794m, E455m) ...".

**[53]** Pursuant to Federal Roads (Sungai Besi Highway) Order 1999 (PU(A) 198/1999) made on 15 May 1999, KM 16.0 falls within the jurisdiction of the Federal Government. Order 2(1) of the Federal Roads (Sungai Besi Highway) Order 1999 (PU(A) 198/1999) provides that that part of the road known as Sungai Besi Highway commencing from the Selangor Turf Club Junction at KM 12.5 (at co-ordinate S14163m, E541m) and ending at KM 1.9 (at co-ordinate S6794m, E455m) ... is declared as Federal road.

**[54]** From the above it is clear that the location which the respondent claimed to be under its jurisdiction, ie where the alleged offences stated in the first and second decisions were said to have been committed falls under the jurisdiction of the Federal Government.

**[55]** As both Lebuhraya PLUS and Plaza Toll Sg Besi at KM 16.0 Kuala Lumpur-Seremban, 43300 Seri Kembangan had been gazetted and demarcated for use as Federal roads, these roads and/or location fall under the jurisdiction of the Federal Government.

**[56]** In view of the above, the respondent could not claim that it has jurisdiction over the said Federal road.

**[57]** Article 80 of the FC provides that the executive authority of the Federation extends to all matters with respect to which Parliament may make laws. In the case at hand, the executive authority of the Federation extends to all matters with respect to Federal roads.

**[58]** Article 81 of the FC has also imposed limitations as to the manner the executive authority of the State is to be exercised by providing that the executive authority of the State of every state shall be so exercised so as to ensure compliance with federal law applying to that State and as not to impede or prejudice the exercise of the executive authority of the Federation.

**[59]** Upon the close perusal of the relevant provisions of Act 333 and Act 376 and a reconciliation of the provisions of the FC as highlighted above, the executive authority pertaining to Act 333 and Act 376 are with the Federation. Although the land is still with the State, as the road had already been gazetted and declared as Federal road under the abovementioned Act, the State Government is under a constitutional obligation to ensure compliance so as not to impede or prejudice the exercise of executive authority of the Federation.

**[60]** Further, the said land may be a State land, but this does not mean that the respondent can exert its authority over the said land. The respondent must understand that the local government is a different entity from the State Government. As I had indicated earlier pursuant to s. 85 of Act 333, any works of any description to be undertaken in, upon, over or under any Federal road must be with the approval of the Minister for works. Hence the respondent cannot impose its authority on the applicant herein.

**[61]** For the above reasons, I am of the considered view that the first issue must be answered in the negative. For this reason alone, the applicant's application ought to be granted by this court. Notwithstanding the above and for want of completeness I will also delve on other issues herein.

*Issue 2 – Whether The Toll Booth Can Be Considered As A "Business" As Defined By The Local Government Act 1976, Undang-Undang Kecil Pelesenan Trade, Perniagaan & Perindustrian (Majlis Perbandaran Subang Jaya) 2007 Sel PU89?*

**[62]** Under this issue, the respondent had relied on s. 2 of Sel PU89, ie Sch. 3 Item 53 and had classified each and every toll booth in Sungai Besi Toll Plaza to constitute a business and concluded that the term of *perniagaan* which means *apa-apa aktiviti seperti yang disenaraikan dalam Jadual Ketiga*, Item 53 of PU89 would encompass the operating of the toll plazas.

**[63]** In response to this, I would reiterate the same reasoning I had highlighted under issue 1 herein and ruled that the respondent has no jurisdiction to encroach to the jurisdiction of the applicant and/or to impose its laws on the applicant. For want of completeness, I would deal with this issue as follows.

**[64]** In dealing with this issue, the respondent has considered each and every toll booth in the Sungai Besi Toll Plaza as a business.

**[65]** Even assuming that the respondent had the necessary mandate to deal with the applicant in the manner, which I think the respondent did not have, based on my reasoning under issue 1, the respondent had acted unreasonably by classifying each and every of the applicant's toll booth as a "business" which requires licence to be applied for from the respondent. It is indeed irrational for the respondent to consider each and every toll booth within the toll plaza as a single "business" within Sel PU 9 to require separate licence to be applied for. The entire toll plaza falls under the purview of the applicant, trading as one single entity. Therefore it would be absurd to suggest that the applicant has to apply for several licences to operate the toll plaza.

**[66]** Learned counsel for the applicant had drawn the analogy to trade licence fees charged under Sel PU89 especially for Items 7, 28 and 32. Item 7 relates to trade fee payable by petrol stations. Items 28 and 32 are trade licence fee payable by both supermarkets and hypermarkets

respectively. All these businesses employ a business model somewhat similar to a toll plaza. With respect to petrol station, it has several pumps and at each pump a contract between the customer and petrol supplier is formed. Likewise in the supermarket there will be several cashiers manning the check-out lanes. At each check-out point a contract will be formed between the customer and the supermarket and/or hypermarket. With respect to the petrol pumps, supermarkets and hypermarkets, Sel PU89 merely prescribes a fixed fee for these businesses obliged to pay to obtain a trade licence.

**[67]** Based on the above, even assuming the applicant has to pay the fees for the trade licence, it only has to pay RM1,000 for all the toll booths at the toll plaza and not RM1,000 for a single toll booth.

**[68]** Notwithstanding what had been stated above, I maintained my view that the respondent has no jurisdiction to encroach into the jurisdiction of the applicant as discussed above and to compel the applicant to apply for licence.

*Issue 3 – Whether The Signboards Put Up By The Applicant Are Direction Signs And Not Advertisements As Defined By The Local Government Act 1976 And Sel PU89?*

**[69]** The third issue for consideration is whether the signboards placed at the toll plaza could be termed as "advertisement" as defined under the Local Government Act 1976 and Sel PU89.

**[70]** I will place the same caveat under this heading. For one of duplicity I will not repeat my earlier reasoning. I reiterate my earlier reasoning herein.

**[71]** The signboards which the respondent claimed as advertisements are, in fact, signboards which indicate locations and demarcate lanes. These signboards are purely for reason of directing road users into the correct lane. As these signboards are not promotional boards for any commercial gains, these signboards are excluded from the definition of "advertisement" under Sel PU89 (see exhs. A-5, A-6 of encl. 3).

**[72]** It is observed that the purported advertisement which the respondent was making an issue about is of a non-permanent nature for which the respondent had admitted that anybody interested in putting the advertisement need only to apply for a temporary permit. These purported advertisements were of a non-permanent nature placed by a third party and could be disassembled or dismantled as these were commercial boards.

**[73]** These non-permanent advertisements were not placed by the applicant but by a third party on the pillars of the toll gate. Therefore the applicant could not be compelled to apply for the permit.

**[74]** The respondent contended that for non-permanent advertisement, the person placing the advertisement only need to apply for temporary permit. However in the case at hand, the applicant was required to apply for a licence.

## Conclusion

**[75]** Bearing in mind of the above said discussions, upon perusal of the cause papers, the written submissions of all the relevant parties herein and upon hearing learned counsel for the applicant and the respondent respectively and upon giving this matter a serious consideration, I am of the view that the decision of the respondent suffered from infirmities of illegality and irrationality which merit curial intervention. For the abovementioned reasons I allowed the prayers sought in terms of encl. 7 with costs. After hearing a brief submission on the issue of costs, I have allowed costs of RM10,000 to be awarded to the applicant.

**[76]** I am also guided by the judgment of my learned sister, Justice Zaleha Yusof in *Beta Tegap Sdn Bhd v. Majlis Perbandaran Sepang; Peguam Negara Malaysia (Intervener)* [2014] 4 CLJ 551; [2013] 10 MLJ at p. 240 pertaining to the issue of jurisdiction over roads gazetted as Federal under the relevant laws as discussed above. That decision in the case stated above had been affirmed by the Court of Appeal on 23 March 2015 (W-01-130-04-2013).